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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/233,443	01/20/1999	BERNHARD H. VAN LINGERICH	BVL-105	7428

7590 10/15/2003
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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/15/2003

44

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/233443

Applicant(s)

VAN LONGRICH

Examiner

WEA MAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 21, 22, 26, 29, 47-55, 57, 66, 67, 96-108, 9 is/are pending in the application.
- Of the above claim(s) 53, 98, 100 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 21, 22, 26, 29, 47-52, 55, 66, 67, 96, 97, 99, 101-108, 9 is/are rejected.
- ☒ Claim(s) 54, 57 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Applicant Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1617

Prosecution is reopen upon a finding of new art.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11/4/03
Claims 21, 22, 26, 29, 47-52, 55, 66-67, 96, 97, 99, 101-106⁹ are rejected under

35 U.S.C. 103(a) as being unpatentable over Vegesna et al in view of Cavalier Vesely et al, Hampton et al and Craig et al.

Vegesna et al teach non-BAKED Granules comprising cholestyramine, oil, and a grain or flour (abstract). 10-15% oil is disclosed (column 2 lines 65-66). 15-17% water is specified (column 6 lines 9-11). Control of high cholesterol levels is specified (column 1 lines 10-13). A substantially homogenous mixture is disclosed (column 6 lines 15-18). Wheat is specified (column 3 lines 28-31). Tablets are disclosed (abstract).

Cavaliere Vesely teaches lactobacilli for the treatment of hypercholesterolemia (abstract). Pellets and tablets are specified (column 3 lines 19-22). 10-95% is disclosed² (column 2 lines 30-34).

It would have been obvious to one of ordinary skill to add lactobacilli to the composition of Vegesna et al to achieve the additional beneficial effect of a second agent for treating high cholesterol in view of Cavaliere Vesely et al. As to the claimed durum wheat, gluten is a well-known binder for tablets (Hampton et al column 1 lines 57-58). And durum wheat is well known as high in gluten content (Craig et al column 1 lines 31-34). Thus, it would be an obvious expedient to chose⁰ durum for the Vegesna et

Art Unit: 1617

al wheat to achieve the beneficial effect of the tablet binding property of Gluten contained therein. As to the claimed controlled release, such a limitation is merely an intended use. As to the claimed process of making such is not considered a patentable limitation during prosecution of product claims before the USPTO.

Claims 21, 22, 26, 29, 47-52, 55, 66-67, 96, 97, 99, 101-106 are rejected.

Claims 54, 57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Webman/LR
October 1, 2003

EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500